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09/981,790	10/19/2001	Todd J. Mortier	7528.0003-01	6743
22852	7590	04/05/2006	EXAMINER	
FINNEGAN, HENDERSON, FARABOW, GARRETT & DUNNER LLP 901 NEW YORK AVENUE, NW WASHINGTON, DC 20001-4413			WILLSE, DAVID H	
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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 09/981,790
Filing Date: October 19, 2001
Appellant(s): MORTIER ET AL.

MAILED
APR 15 2006
Group 3700

Leslie I. Bookoff
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed January 23, 2006, appealing from the Office action mailed April 18, 2005.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

No amendment after final has been filed.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

No evidence is relied upon by the examiner in the rejection of the claims under appeal.

(9) Grounds of Rejection

The following grounds of rejection are applicable to the appealed claims:

Claims 64, 66, 67, and 83 are rejected under 35 U.S.C. 102(b) as being anticipated by Alferness, US 5,702,343. The cardiac reinforcement device (CRD) in the form of a jacket can be placed under the parietal pericardium (column 3, lines 66-67; column 6, lines 66-67) so that the geometry or configuration of heart wall structure is altered in the sense that significant portions of the heart wall are forced inwardly away from the parietal pericardium by the reaction forces of the constraining CRD jacket materials and structure (column 3, lines 14-16; column 4, lines 1-8; column 7, lines 4-11); heart structure is further altered after the device has been adjusted for size reduction (column 2, lines 8-18; column 4, line 43, through column 5, line 16). The gradual reduction in heart size (column 4, lines 9-11), along with the thickness and lower compliance of the CRD biomedical material (column 3, lines 22-32), clearly alters heart wall geometry during systole as well. Moreover, the Alferness jacket is specifically designed to reduce the problems associated with cardiac dilation (column 1, lines 48-50; column 2, lines 19-21), said problems including "leakage of the cardiac valves due to enlargement of the valvular annulus" (column 1, lines 25-28; column 5, lines 30-41). Because atrioventricular valves are supposed to prevent backflow of blood during systole, the CRD jacket alters heart structure which in turn reduces the size of the annulus (and hence draws together the leaflets) for the cardiac cycle, including systole.

(10) Response to Argument

Reading present claim 83 *in light of the specification* is especially critical, since otherwise the scope could easily be misinterpreted. The language “throughout the cardiac cycle” (claim 83, lines 2-3) is nowhere to be found in the original disclosure, particularly with regard to passively altering a geometry of “other” heart structure (claim 83, lines 3-5), and the term “geometry” has *not* been defined by the Appellant in a manner prescribed by MPEP § 2111.01. Therefore, the examiner has given claim 83 its broadest reasonable interpretation consistent with the specification (MPEP § 2111).

The Appellant expects the examiner to demonstrate that the Alferness jacket alters a geometry of “other” heart structure even during systole (and the examiner has done so), yet the Appellant has not shown that the Appellant’s own invention (as originally disclosed) possesses such a feature. If the Appellant’s method inherently meets such a limitation, then so does the Alferness method, because both procedures employ passive devices not intended to actively assist systolic contractions. With regard to the issue of whether the Alferness jacket draws together leaflets of the *in situ* valve, the Appellant (e.g., at the third paragraph on page 17 of the Appeal Brief) once again misrepresents the examiner’s position, as explained in the Advisory action mailed on September 30, 2005.

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(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,



David H. Willse
Primary Examiner

Conferees:

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